

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, *et al.*

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION

FILE NO. 1:17-CV-2989-AT

STATE DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

This week, the Court of Appeals of Georgia affirmed the dismissal of a challenge to Georgia's Dominion electronic voting system, rejecting a theory of voter ballot verification that echoes the one Plaintiffs press in this case.

VoterGA et al. v. Georgia, No. A23A0004 (Ga. Ct. App. June 13, 2023)

[hereinafter *VoterGA*]. State Defendants respectfully submit the opinion in that case, attached hereto as **Exhibit A**, for the Court's consideration.

In *VoterGA*, the plaintiffs, a nonprofit corporate entity and a Georgia elector, sought declaratory and injunctive relief from the State based on allegations that the State's Dominion ballot marking devices' ("BMD") incorporation of QR codes in paper ballots rendered those ballots unverifiable in contravention of Georgia law. *Id.* at 2-3. The trial court granted the

State's motion to dismiss due to the absence of an actual controversy between the parties and there being "no interpretation of the facts presented that would provide the petitioners relief for their claim." *Id.* (internal quotation marks and brackets omitted). The plaintiffs appealed, arguing that they were entitled to seek declaratory relief on their ballot-verification claim.

In a unanimous decision, the Court of Appeals of Georgia affirmed the trial court's dismissal because the plaintiffs had failed to state a claim on which relief could be granted. *Id.* at 4. The plaintiffs' verification theory in *VoterGA* tracked that of Plaintiffs' here:

[P]etitioners argue that, although electors can verify their voting choices on a printed ballot, electors cannot verify whether the corresponding QR Code printed on the ballot, which is unreadable by an elector, accurately records the elector's voting choices. Thus, the petitioners contend that the electronic ballot markers obtained from Dominion Voting Systems do not comply with [provisions of Georgia's Election Code].

Id. at 6-7. But Georgia law does not "require[] that the corresponding QR code on the ballot be readable by an elector, or that electors must be able to verify their election choices through the specific mechanism or device that actually tabulates and counts their voting choices." *Id.* at 7-8. Rather, "the law simply requires that electronic ballot markers produce paper ballots that are marked with the elector's choices in a format that can be read by the

elector, and the petitioners do not dispute that an elector can read their voting choices on the printed paper ballot.” *Id.* at 8. The *VoterGA* plaintiffs thus faced no danger of an injury under state law and there therefore existed no set of provable facts they could introduce warranting relief. *Id.* Those plaintiffs admitted, as the Plaintiffs and their cadre of experts here must, that Georgia electors can verify the written, human-readable portion of BMD-marked paper ballots. *Id.* at 3, 8 n.2. Those ballots are “marked with the elector’s choices in a format readable by the elector,” and the law does not require more in the way of voter verifiability. *Id.* at 7-8 (quoting O.C.G.A. § 21-2-300(a)(2)).

Respectfully submitted, this 15th day of June, 2023.

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LOCAL RULE 7.1(D) CERTIFICATION

I certify that this State Defendants' Notice of Supplemental Authority has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1. Specifically, this document has been prepared using 13-pt Century Schoolbook font and type.

/s/ Vincent R. Russo
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